

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARIO ROSAS,

Defendant.

No. 05-4109-MWB

**INSTRUCTIONS  
TO THE JURY**

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**VERDICT FORM**

## INSTRUCTION NO. 1 - INTRODUCTION

Members of the jury, these instructions are given to help you better understand the trial and your role in it and to instruct you on the law that you must apply in this case. Consider these instructions, together with all written and oral instructions given to you during or at the end of the trial, and apply them as a whole to the facts of the case. In considering these instructions, the order in which they are given is not important.

In **Count 1** of an Indictment, a Grand Jury charges defendant Mario Rosas with conspiracy to commit one or more of the following offenses: (1) distribution of 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine; and (2) distribution of 50 grams or more of actual (pure) methamphetamine. In **Count 2** of the Indictment, a Grand Jury charges the defendant with possessing, with intent to distribute, 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine. As I explained during jury selection, an Indictment is simply an accusation. It is not evidence of anything. The defendant has pled not guilty to the charges brought against him; therefore, he is presumed to be innocent of the charges unless and until the prosecution proves his guilt on those charges beyond a reasonable doubt.

Your duty is to decide from the evidence whether the defendant is not guilty or guilty of the crimes charged against him. You will find the facts from the evidence. You are entitled to consider that evidence in light of your own observations and experiences. You may use reason and common sense to draw

conclusions from facts that have been established by the evidence. You will then apply the law, which I will give you in my instructions, to the facts to reach your verdict. You are the sole judges of the facts; but you must follow the law as stated in my instructions, whether you agree with it or not.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, based solely on the evidence, your common sense, and the law as I give it to you. Do not take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be. Similarly, do not conclude from any ruling or other comment I may make that I have any opinions on how you should decide the case.

Please remember that only defendant Mario Rosas, not anyone else, is on trial here. Also, remember that the defendant is on trial *only* for the crimes charged against him, not for anything else.

*You must give separate consideration to each charge against the defendant. Therefore, you must return a separate, unanimous verdict on each charge against the defendant.*

## INSTRUCTION NO. 2 - PRELIMINARY MATTERS

Before I turn to specific instructions on the offenses charged in this case, I must explain some preliminary matters.

### *“Elements”*

Each offense charged in this case consists of “elements,” which the prosecution must prove beyond a reasonable doubt against the defendant in order to convict him of that offense. I will summarize in the following instructions the elements of the offenses with which the defendant is charged.

### *Timing*

The Indictment alleges that the “conspiracy” offense was committed “between about” two dates and that the “possession with intent to distribute” offense was committed “on or about” a certain date. The prosecution does not have to prove with certainty the exact date of an offense charged. It is sufficient if the evidence establishes that an offense in question occurred within a reasonable time of the date alleged in the Indictment.

### *Controlled substances*

In these instructions, when I refer to a “controlled substance,” I mean any drug or narcotic the manufacture, possession, possession with intent to distribute, or distribution of which is prohibited or regulated by federal law. The charges in this case allegedly involved two forms of methamphetamine, both of which are “controlled substances.” One form of methamphetamine, “actual (pure) methamphetamine” is methamphetamine itself—that is, either by itself or contained

in a mixture or substance. The second form of methamphetamine, a “methamphetamine mixture,” is a mixture or substance containing a detectable amount of “actual (pure) methamphetamine.”

***“Intent” and “Knowledge”***

The elements of the charged offenses require proof of what the defendant “intended” or “knew.” A defendant’s “intent” and “knowledge” must be proved beyond a reasonable doubt. “Intent” and “knowledge” are mental states. It is seldom, if ever, possible to determine directly the operations of the human mind. However, “intent” and “knowledge” may be proved like anything else, from reasonable inferences and deductions drawn from the facts proved by the evidence. Therefore, you may consider any statements made or acts done by the defendant and all of the facts and circumstances in evidence to aid you in the determination of his “knowledge” or “intent.”

An act was done “knowingly” if the defendant was aware of the act and did not act through ignorance, mistake, or accident. The prosecution is not required to prove that the defendant knew that his acts or omissions were unlawful. An act was done “intentionally” if it was done voluntarily, without coercion, and not because of ignorance, mistake, accident, or inadvertence.

***“Possession,” “Distribution,” and “Delivery”***

The charges in the Indictment involve “distribution” and “possession with intent to distribute” methamphetamine. “Distribution,” in turn, involves “possession” and “delivery.” The following definitions of these terms apply in these instructions:

The law recognizes several kinds of “possession.” A person who knowingly has direct physical control over an item, at a given time, is then in “actual possession” of it. A person who, although not in actual possession, has both the power and the intention at a given time to exercise control over an item, either directly or through another person or persons, is then in “constructive possession” of it. If one person alone has actual or constructive possession of an item, possession is “sole.” If two or more persons share actual or constructive possession of an item, possession is “joint.” Whenever the word “possession” is used in these instructions, it includes “actual” as well as “constructive” possession and also “sole” as well as “joint” possession.

In addition, mere presence where an item was found or mere physical proximity to the item is insufficient to establish “possession” of that item. Knowledge of the presence of the item, at the same time one has control over the item or the place in which it was found, is required. Thus, in order to establish a person’s “possession” of an item, the prosecution must establish that, at the same time, (a) the person knew of the presence of the item; (b) the person intended to exercise control over the item or place in which it was found; (c) the person had the power to exercise control over the item or place in which it was found; and (d) the person knew that he had the power to exercise control over the item or place in which it was found.

Therefore, the term “distribute” means to deliver a controlled substance to the actual or constructive possession of another person. The term “deliver” means the actual, constructive, or attempted transfer of a controlled substance to the actual or

constructive possession of another person. It is not necessary that money or anything of value change hands. The law prohibits “distribution” of a controlled substance, “possession with intent to distribute” a controlled substance, and an agreement to “distribute” a controlled substance; the prosecution does not have to prove that there was or was intended to be a “sale” of a controlled substance to prove a conspiracy to distribute that controlled substance or possession with intent to distribute that controlled substance.

\* \* \*

I will now give you more specific instructions about the offenses charged in the Indictment.



### INSTRUCTION NO. 3 - COUNT 1: NATURE OF THE CONSPIRACY

The Indictment charges that, between about July 1, 2005, and continuing through September 20, 2005, the defendant knowingly and unlawfully conspired with other persons, known and unknown to the Grand Jury, to commit one or more of the following offenses: (1) distribution of 500 grams or more of a methamphetamine mixture; and (2) distribution of 50 grams or more of actual (pure) methamphetamine. The offenses that the defendant allegedly conspired to commit are called the “objectives” of the conspiracy.

For you to find the defendant guilty of this “conspiracy” offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements:

*One*, between about July 1, 2005, and continuing through September 20, 2005, two or more persons reached an agreement or came to an understanding to commit one or more of the offenses alleged to be objectives of the conspiracy;

*Two*, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect;

*Three*, at the time the defendant joined in the agreement or understanding, the defendant knew the purpose of the agreement or understanding.

For you to find the defendant guilty of the “conspiracy” charged in the Indictment, the prosecution must prove *all* of the essential elements of this offense

beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the “conspiracy” offense charged in the Indictment.

In the next instruction, I will explain each of these elements in more detail.

## **INSTRUCTION NO. 4 - COUNT 1: ELEMENTS OF THE CONSPIRACY**

The elements of the “conspiracy” offense, in more detail, are the following:

*One*, between about July 1, 2005, and continuing through September 20, 2005, two or more persons reached an agreement or came to an understanding to commit one or more of the offenses alleged to be objectives of the conspiracy.

The prosecution must prove that the defendant reached an agreement or understanding with at least one other person. The other person or persons do not have to be defendants, or named in the Indictment, or otherwise charged with a crime. There is no requirement that any other conspirators be named as long as you find beyond a reasonable doubt that there was at least one other co-conspirator besides the defendant.

The “agreement or understanding” need not be an express or formal agreement or be in writing or cover all the details of how it is to be carried out. Nor is it necessary that the members have directly stated between themselves the details or purpose of the scheme. In determining whether the alleged agreement existed, you may consider the actions and statements of all of the alleged participants, whether they are charged as defendants or not. The agreement may be inferred from all of the circumstances and the conduct of the alleged participants.

The Indictment alleges that the conspirators unlawfully agreed to commit one or more offenses, which are called the “objectives” of the conspiracy. The two objectives alleged in this case involve distribution of

different forms of methamphetamine: One objective involves distribution of 500 grams or more of a methamphetamine mixture, and the other involves distribution of 50 grams or more of actual (pure) methamphetamine. To assist you in determining whether there was an agreement to commit either or both of these objectives, you should consider the elements of a “*distribution*” offense. Those elements are the following: (1) a person intentionally distributed the form of methamphetamine alleged (either actual (pure) methamphetamine or a methamphetamine mixture) to another; and (2) at the time of the distribution, the person knew that what he or she was distributing was a controlled substance.

You may find that the defendant agreed to commit one objective, both objectives, or neither objective. If you find that the defendant agreed with others to commit one or both of the objectives alleged, then you may find him guilty of the “conspiracy” charge. However, if you find that he did not agree to commit either objective, then you must find him not guilty of the “conspiracy” charge.

Also keep in mind that the prosecution must prove that there was an *agreement* to commit one or more of these “objectives” to establish the guilt of the defendant on the conspiracy charge. The prosecution is *not* required to prove that either “objective” *was actually committed*. In other words, the question is whether the defendant *agreed* to commit one or more of these offenses, not whether the defendant or someone else actually *committed* these offenses. Thus, if there was no agreement, there was no conspiracy. Similarly, if you find that there was an agreement, but you find that the defendant did not join in that agreement, or did not know the purpose of the

agreement, then you cannot find that defendant guilty of the “conspiracy” charge.

*Two*, the defendant voluntarily and intentionally joined in the agreement or understanding, either at the time it was first reached or at some later time while it was still in effect.

You should understand that merely being present at the scene of an event, or merely acting in the same way as others, or merely associating with others does not prove that a person has joined in an agreement or understanding. A person who has no knowledge of a conspiracy, but who happens to act in a way that advances some purpose of one, does not thereby become a member. Similarly, mere knowledge of the existence of a conspiracy, or mere knowledge that a controlled substance is being distributed or possessed with intent to distribute, is not enough to prove that the defendant joined in the conspiracy; rather, the prosecution must establish some degree of knowing involvement and cooperation.

On the other hand, a person may join in an agreement or understanding, as required by this element, without knowing all the details of the agreement or understanding, and without knowing who all the other members are. Further, it is not necessary that a person agree to play any particular part in carrying out the agreement or understanding. A person may become a member of a conspiracy even if that person agrees to play only a minor part in the conspiracy, as long as that person has an understanding of the unlawful nature of the plan and voluntarily and intentionally joins in it.

In deciding whether the defendant voluntarily and intentionally joined in the agreement, you must consider only evidence of the defendant’s own actions and

statements. You may not consider actions and pretrial statements of others, except to the extent that pretrial statements of others describe something that the defendant said or did.

*Three*, at the time the defendant joined in the agreement or understanding, the defendant knew the purpose of the agreement or understanding.

The defendant must know of the existence and purpose of the conspiracy. Without such knowledge, the defendant cannot be guilty of conspiracy, even if his acts furthered the conspiracy.

For you to find the defendant guilty of the “conspiracy” charged in **Count 1** of the Indictment, the prosecution must prove *all* of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the “conspiracy” offense charged in **Count 1** of the Indictment.

In addition, if you find the defendant guilty of this “conspiracy” offense, then you must also determine beyond a reasonable doubt the quantity of the methamphetamine (either actual (pure) methamphetamine or a methamphetamine mixture or both) actually involved in the conspiracy for which the defendant can be held responsible, as explained in Instruction No. 7.

**INSTRUCTION NO. 5 - COUNT 1: ACTS AND STATEMENTS  
OF ALLEGED CO-CONSPIRATORS**

If you find beyond a reasonable doubt that the conspiracy charged in the Indictment in this case existed, and that the defendant was one of its members, then you may consider acts knowingly done and statements knowingly made by the defendant's co-conspirators during the existence of the conspiracy and in furtherance of it as evidence pertaining to the defendant, even though those acts were done or those statements were made in the defendant's absence and without his knowledge. This includes acts done or statements made before the defendant joined the conspiracy. On the other hand, an act or statement by someone other than the defendant that was not made during and in furtherance of the conspiracy cannot be attributed to the defendant in this way.

**INSTRUCTION NO. 6 - COUNT 2: POSSESSION  
WITH INTENT TO DISTRIBUTE**

**Count 2** of the Indictment charges that, on or about September 20, 2005, the defendant knowingly and intentionally possessed, with intent to distribute, 500 grams or more of a methamphetamine mixture.

For you to find the defendant guilty of this “possession with intent to distribute” offense, the prosecution must prove beyond a reasonable doubt *all* of the following essential elements:

*One*, on or about September 20, 2005, the defendant was in possession of a methamphetamine mixture.

“Possession” was defined for you in Instruction No. 2. You must ascertain whether or not any substance in the defendant’s possession was, in fact, a methamphetamine mixture.

*Two*, the defendant knew that he was, or intended to be, in possession of a controlled substance.

“Knowledge” and “intent” were defined for you in Instruction No. 2. Additionally, the defendant need not have known what the controlled substance was, if the defendant knew that he had possession of some controlled substance.

*Three*, the defendant intended to distribute some or all of the controlled substance to another person.

Again, “intent” was defined for you in Instruction No. 2. Evidence of an intent to distribute a controlled



substance may include drug purity and the presence of firearms, cash, packaging material, or other distribution paraphernalia. The term “distribute” was also defined for you in Instruction No. 2.

For you to find the defendant guilty of the “possession with intent to distribute” offense charged in **Count 2** of the Indictment, the prosecution must prove *all* of the essential elements of this offense beyond a reasonable doubt. Otherwise, you must find the defendant not guilty of the “possession with intent to distribute” offense charged in **Count 2** of the Indictment.

In addition, if you find the defendant guilty of this “possession with intent to distribute” offense, then you must also determine beyond a reasonable doubt the quantity of the methamphetamine mixture involved in the “possession with intent to distribute” offense for which the defendant can be held responsible, as explained in Instruction No. 7.

## INSTRUCTION NO. 7 - QUANTITY OF METHAMPHETAMINE

The charges in this case allegedly involved two forms of methamphetamine: **Count 1** alleged involved 500 grams or more of a methamphetamine mixture and/or 50 grams or more of actual (pure) methamphetamine; **Count 2** allegedly involved 500 grams or more of a methamphetamine mixture. The prosecution does not have to prove that a charged offense involved the amount or quantity of methamphetamine alleged in the Indictment. However, *if* you find the defendant guilty of a charged offense, *then* you must determine the following matters *beyond a reasonable doubt*: (1) whether that offense actually involved the form or forms of methamphetamine alleged; and if so, (2) the *total quantity*, in grams, of the methamphetamine involved in that offense for which the defendant can be held responsible. In so doing, you may consider all of the evidence in the case that may aid in the determination of these issues.

### ***Responsibility***

A defendant guilty of ***conspiracy*** to distribute a controlled substance is responsible for the quantities of that controlled substance that he actually distributed or agreed to distribute. Such a defendant is also responsible for those quantities of that controlled substance that fellow conspirators distributed or agreed to distribute, if you find that a defendant guilty of the conspiracy could have reasonably foreseen, at the time that he joined the conspiracy or while the conspiracy lasted, that those prohibited acts were a necessary or natural consequence of the conspiracy.

A defendant guilty of *possessing with intent to distribute* a controlled substance is responsible for the quantities of that controlled substance that he actually possessed with intent to distribute.

***Determination of quantity and verdict***

For each count, you must determine the form or forms of methamphetamine involved and the *total quantity*, in *grams*, of such form or forms of methamphetamine for which the defendant, found guilty of that offense, can be held responsible. You must then indicate that quantity in the Verdict Form. You may find more or less than the charged quantity of methamphetamine for any offense, and you may find different quantities for different offenses, but you must find that the quantity you indicate in the Verdict Form has been proved beyond a reasonable doubt as the quantity for which the defendant can be held responsible on the offense in question.

In making your determination of quantity as required, it may be helpful to remember that one pound is approximately equal to 453.6 grams, and that one ounce is approximately equal to 28.34 grams.

**INSTRUCTION NO. 8 - PRESUMPTION OF INNOCENCE  
AND BURDEN OF PROOF**

Mario Rosas is presumed innocent and, therefore, not guilty. This presumption of innocence requires you to put aside all suspicion that might arise from the arrest or charge of the defendant or the fact that he is here in court. The presumption of innocence remains with the defendant throughout the trial. That presumption alone is sufficient to find him not guilty. The presumption of innocence may be overcome as to the defendant only if the prosecution proves, beyond a reasonable doubt, *all* of the elements of an offense charged against him.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. Therefore, if the defendant does not testify, you must not consider that fact in any way, or even discuss it, in arriving at your verdict. A defendant is not even obligated to produce any evidence by cross-examining the witnesses who are called to testify by the prosecution.

Unless the prosecution proves beyond a reasonable doubt that the defendant has committed each and every element of a charged offense, you must find the defendant not guilty of that charged offense.

## **INSTRUCTION NO. 9 - REASONABLE DOUBT**

I have previously instructed you that, for you to find the defendant guilty of a charged offense, the prosecution must prove that charge “beyond a reasonable doubt.” A reasonable doubt may arise from the evidence produced by either the prosecution or the defendant, keeping in mind that the defendant never has the burden or duty of calling any witnesses or producing any evidence. It may also arise from the prosecution’s lack of evidence. A reasonable doubt is a doubt based upon reason and common sense. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, must be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the more serious and important transactions of life. However, proof beyond a reasonable doubt does not mean proof beyond all possible doubt.

## **INSTRUCTION NO. 10 - DEFINITION OF EVIDENCE**

Your verdict must be based only on the evidence presented in this case and these and any other instructions that I may give you during the trial. Evidence is:

1. Testimony.
2. Exhibits that I admit into evidence.
3. Stipulations, which are agreements between the parties.

Evidence may be “direct” or “circumstantial.” The law makes no distinction between the weight to be given to direct and circumstantial evidence. The weight to be given any evidence is for you to decide.

A particular item of evidence is sometimes admitted only for a limited purpose, and not for any other purpose. I will tell you if that happens, and instruct you on the purposes for which the item can and cannot be used.

The fact that an exhibit may be shown to you does not mean that you must rely on it more than you rely on other evidence.

The following are not evidence:

1. Statements, arguments, questions, and comments by the lawyers.
2. Objections and rulings on objections.
3. Testimony I tell you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

The weight of the evidence is not determined merely by the number of witnesses testifying as to the existence or non-existence of any fact. Also, the weight of the evidence is not determined merely by the number or volume of

documents or exhibits. The weight of the evidence depends upon its quality, which means how convincing it is, and not merely upon its quantity. For example, you may choose to believe the testimony of one witness, if you find that witness to be convincing, even if a number of other witnesses contradict his or her testimony. The quality and weight of the evidence are for you to decide.

## **INSTRUCTION NO. 11 - CREDIBILITY AND IMPEACHMENT**

In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness says, only part of it, or none of it.

In deciding what testimony to believe, consider the witness's intelligence, the opportunity the witness had to have seen or heard the things testified about, the witness's memory, any motives that witness may have for testifying a certain way, the manner of the witness while testifying, whether that witness said something different at an earlier time, the witness's drug or alcohol use or addiction, if any, the general reasonableness of the testimony, and the extent to which the testimony is consistent with any evidence that you believe. In deciding whether or not to believe a witness, keep in mind that people sometimes see or hear things differently and sometimes forget things. You need to consider, therefore, whether a contradiction results from an innocent misrecollection or sincere lapse of memory, or instead from an intentional falsehood or pretended lapse of memory.

Ordinarily, witnesses may only testify to factual matters within their personal knowledge. However, you may hear evidence from persons described as experts. Persons may become qualified as experts in some field by knowledge, skill, training, education, or experience. Such experts may state their opinions on matters in that field and may also state the reasons for their opinions. You should consider expert testimony just like any other testimony. You may believe all of what an expert says, only part of it, or none of it, considering the expert's qualifications, the



soundness of the reasons given for the opinion, the acceptability of the methods used, any reason the expert may be biased, and all of the other evidence in the case.

Just because a witness works in law enforcement or is employed by the government does not mean you should give more weight or credence to such a witness's testimony than you give to any other witness's testimony.

A witness may be discredited or impeached by contradictory evidence; by a showing that the witness testified falsely concerning a material matter; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, that is inconsistent with the witness's present testimony. If earlier statements of a witness were admitted into evidence, they were not admitted to prove that the contents of those statements were true. Instead, you may consider those earlier statements only to determine whether you think they are consistent or inconsistent with the trial testimony of the witness, and therefore whether they affect the credibility of that witness.

You may hear evidence that a witness has been convicted of a crime. You may use that evidence only to help you decide whether or not to believe such a witness and how much weight to give such a witness's testimony.

You should treat the testimony of certain witnesses with greater caution and care than that of other witnesses:

1. You may hear evidence that a witness has an arrangement with the government under which he expects that he or a family member will receive a benefit for providing information to the government or for testifying in this case. Such testimony will be received in evidence and you may

consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not testimony of a witness may be influenced by receiving a benefit is for you to decide.

2. You may also hear testimony from a witness that he or she participated in the crime charged against the defendant. Such testimony will be received in evidence and you may consider it. You may give the testimony of such a witness such weight as you think it deserves. Whether or not the testimony of such a witness may be influenced by his or her desire to please the government or to strike a good bargain with the government about his or her own situation is for you to determine.

\* \* \*

If you believe that a witness has been discredited or impeached, it is your exclusive right to give that witness's testimony whatever weight you think it deserves.

## **INSTRUCTION NO. 12 - BENCH CONFERENCES AND RECESSES**

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please be patient, because while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, to avoid confusion and error, and to save your valuable time. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

### **INSTRUCTION NO. 13 - OBJECTIONS**

The lawyers may make objections and motions during the trial that I must rule upon. If I sustain an objection to a question before it is answered, do not draw any inferences or conclusions from the question itself. Also, the lawyers have a duty to object to testimony or other evidence that they believe is not properly admissible. Do not hold it against a lawyer or the party the lawyer represents because the lawyer has made objections.

## **INSTRUCTION NO. 14 - NOTE-TAKING**

If you want to take notes during the trial, you may, but be sure that your note-taking does not interfere with listening to and considering all the evidence. If you choose not to take notes, remember it is your own individual responsibility to listen carefully to the evidence.

Notes you take during the trial are not necessarily more reliable than your memory or another juror's memory. Therefore, you should not be overly influenced by the notes.

If you take notes, do not discuss them with anyone before you begin your deliberations. At the end of each day, please leave your notes on your chair. At the end of the trial, you may take your notes out of the notebook and keep them, or leave them, and we will destroy them. No one will read the notes, either during or after the trial.

You will notice that we have an official court reporter making a record of the trial. However, we will not have typewritten transcripts of this record available for your use in reaching your verdict.

## INSTRUCTION NO. 15 - CONDUCT OF THE JURY DURING TRIAL

To insure fairness, you as jurors must obey the following rules:

*First*, do not talk among yourselves about this case, or about anyone involved with it, until the end of the case when you go to the jury room to decide on your verdict.

*Second*, do not talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

*Third*, when you are outside the courtroom do not let anyone tell you anything about the case, or about anyone involved with it until the trial has ended and your verdict has been accepted by me. If someone should try to talk to you about the case during the trial, please report it to me.

*Fourth*, during the trial you should not talk with or speak to any of the parties, lawyers, or witnesses involved in this case—you should not even pass the time of day with any of them. It is important that you not only do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the case sees you talking to a person from the other side—even if it is simply to pass the time of day—an unwarranted and unnecessary suspicion about your fairness might be aroused. If any lawyer, party, or witness does not speak to you when you pass in the hall, ride the elevator or the like, it is because they are not supposed to talk or visit with you.

*Fifth*, do not read any news stories or articles about the case, or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it. If you want, you can have your spouse or a friend clip out any stories and set them aside to give you after the trial is over. I can assure you, however, that by the time you have heard the evidence in this case you will know more about the matter than anyone will learn through the news media.

*Sixth*, do not do any research—on the Internet, in libraries, in the newspapers, or in any other way—or make any investigation *about this case* on your own. You must decide this case based on the evidence presented in court.

*Seventh*, do not make up your mind during the trial about what the verdict should be. Keep an open mind until after you have gone to the jury room to decide the case and you and your fellow jurors have discussed the evidence.

*Eighth*, if at anytime during the trial you have a problem that you would like to bring to my attention, or if you feel ill or need to go to the restroom, please send a note to the Court Security Officer, who will deliver it to me. I want you to be comfortable, so please do not hesitate to inform me of any problem.

I will reserve the remaining instructions until after the evidence has been presented and the prosecution and the defense have made their closing arguments to summarize and interpret the evidence for you. However, I remind you that closing arguments, like opening statements, are not evidence.

## **INSTRUCTION NO. 16 - DUTY TO DELIBERATE**

Now that you have heard the evidence and arguments of the prosecution and defense, it is time for you to retire to deliberate on your verdict. However, before you do so, I must give you some instructions on deliberations.

A verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty to consult with one another and to deliberate with a view to reaching agreement if you can do so without violence to your individual judgment. Of course, you must not surrender your honest convictions as to the weight or effect of the evidence solely because of the opinions of other jurors or for the mere purpose of returning a verdict. Each of you must decide the case for yourself; but you should do so only after consideration of the evidence with your fellow jurors.

In the course of your deliberations you should not hesitate to re-examine your own views, and to change your opinion if you are convinced it is wrong. To bring twelve minds to an unanimous result, you must examine the questions submitted to you openly and frankly, with proper regard for the opinions of others and with a willingness to re-examine your own views.

Remember that if, in your individual judgment, the evidence fails to establish the defendant's guilt beyond a reasonable doubt on a particular offense charged against him, then the defendant should have your vote for a not guilty verdict on that offense. If all of you reach the same conclusion, then the verdict of the jury must be not guilty for the defendant on that offense. Of course, the opposite also applies.



If, in your individual judgment, the evidence establishes the defendant's guilt beyond a reasonable doubt on a particular offense charged, then your vote should be for a verdict of guilty against the defendant on that charge, and if all of you reach that conclusion, then the verdict of the jury must be guilty for the defendant on that charge. As I instructed you earlier, the burden is upon the prosecution to prove beyond a reasonable doubt every essential element of a crime charged against the defendant, or you cannot find the defendant guilty of that offense.

Remember, also, that the question before you can never be whether the government wins or loses the case. The government, as well as society, always wins, regardless of whether your verdict is not guilty or guilty, when justice is done.

Finally, remember that you are not partisans; you are judges—judges of the facts. Your sole interest is to seek the truth from the evidence. You are the judges of the credibility of the witnesses and the weight of the evidence.

You may conduct your deliberations as you choose. However, I suggest that you carefully consider all of the evidence bearing upon the questions before you. You may take all the time that you feel is necessary.

There is no reason to think that another trial would be tried in a better way or that a more conscientious, impartial, or competent jury would be selected to hear it. Any future jury must be selected in the same manner and from the same source as you. If you should fail to agree on a verdict, the case is left open and must be disposed of at some later time.

## INSTRUCTION NO. 17 - DUTY DURING DELIBERATIONS

There are certain rules you must follow while conducting your deliberations and returning your verdict:

*First*, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you here in court.

*Second*, if the defendant is guilty, the sentence to be imposed is my responsibility. You may not consider punishment of Mario Rosas in any way in deciding whether the prosecution has proved its case against him beyond a reasonable doubt.

*Third*, if you need to communicate with me during your deliberations, you may send a note to me through the Court Security Officer, signed by one or more jurors. I will respond as soon as possible, either in writing or orally in open court. *Remember that you should not tell anyone—including me—how your votes stand numerically.*

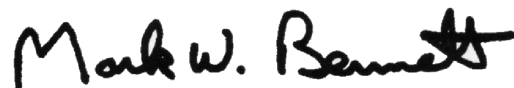
*Fourth*, your verdict must be based solely on the evidence and on the law in these instructions. *You must give separate consideration to each charge against the defendant. Therefore, you must return a separate, unanimous verdict on each charge against the defendant.* Nothing I have said or done is intended to suggest what your verdict should be—that is entirely for you to decide.

*Fifth*, in your consideration of whether the defendant is not guilty or guilty of an offense charged, you must not consider the defendant's race, color, religious

beliefs, national origin, or sex. You are not to return a verdict for or against the defendant on any charge unless you would return the same verdict for that charge without regard to the defendant's race, color, religious beliefs, national origin, or sex. To emphasize the importance of this consideration, the verdict form contains a certification statement. Each of you should carefully read the statement, then sign your name in the appropriate place in the signature block, if the statement accurately reflects the manner in which each of you reached your decision.

*Finally*, I am giving you the verdict form. A verdict form is simply the written notice of the decision that you reach in this case. You will take the verdict form to the jury room. When you have reached a unanimous verdict, your foreperson must complete one copy of the verdict form and all of you must sign that copy to record your individual agreement with the verdict and to show that it is unanimous. The foreperson must bring the signed verdict form to the courtroom when it is time to announce your verdict. When you have reached a verdict, the foreperson will advise the Court Security Officer that you are ready to return to the courtroom.

**DATED** this 10th day of April, 2006.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive, slightly stylized font.

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MARK W. BENNETT  
CHIEF JUDGE, U. S. DISTRICT COURT  
NORTHERN DISTRICT OF IOWA

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARIO ROSAS,

Defendant.

No. CR 05-4109-MWB

**VERDICT FORM**

As to defendant Mario Rosas, we, the Jury, unanimously find as follows:

<b>COUNT 1: CONSPIRACY</b>		<b>VERDICT</b>
<b>Step 1:</b> Verdict	<p>On the charge of “conspiracy,” as explained in Instruction No. 3, and in more detail in Instruction No. 4, please mark your verdict. <i>(If you found the defendant “not guilty,” do not consider the questions in Steps 2 and 3 for Count 1; instead, go on to consider your verdict on the charge against the defendant in Count 2. However, if you found the defendant “guilty” of “conspiracy,” please answer the questions in Steps 2 and 3 in this section of the Verdict Form.)</i></p>	<p>____ Not Guilty</p> <p>____ Guilty</p>
<b>Step 2:</b> “Objective(s)” of the conspiracy	<p><i>If you found the defendant “guilty” of the “conspiracy” offense, please indicate which one or more of the following offenses you unanimously find were “objectives” of the conspiracy, as “objectives” of the conspiracy were explained in Instruction No. 3, and in more detail in Instruction No. 4.</i></p>	
	<p>____ Distribution of a methamphetamine mixture</p>	<p>____ Distribution of actual (pure) methamphetamine</p>
<b>Step 3:</b> Quantity of Methamphet- amine	<p><i>If you found that distribution of a particular form of methamphetamine was an objective of the conspiracy in Step 2, please indicate the quantity of that form of methamphetamine involved in the “conspiracy” offense for which you unanimously find that the defendant can be held responsible, as explained in Instruction No. 7.</i></p>	
	<p>_____ grams of a methamphetamine mixture</p>	<p>_____ grams of actual (pure) methamphetamine</p>

COUNT 2: POSSESSION WITH INTENT TO DISTRIBUTE		VERDICT
<b>Step 1:</b> Verdict	On the charge of “possession with intent to distribute,” as explained in Instruction No. 6, please mark your verdict. <i>(If you found the defendant “not guilty,” do not consider the question in Step 2; instead, notify the Court Security Officer that you have reached a verdict. However, if you found the defendant “guilty” of “possession with intent to distribute,” please answer the question in Step 2 of this section of the Verdict Form.)</i>	<input type="checkbox"/> Not Guilty <input type="checkbox"/> Guilty
<b>Step 2:</b> Quantity of Methamphet- amine	If you found the defendant “guilty” of the “possession with intent to distribute” offense in <b>Count 2</b> , please indicate the quantity of the methamphetamine mixture involved in this offense for which you unanimously find that the defendant can be held responsible, as explained in Instruction No. 7.	
	_____ grams of a methamphetamine mixture	
<b>CERTIFICATION</b>		
By signing below, each juror certifies that consideration of the defendant’s race, color, religious beliefs, national origin, or sex was not involved in reaching the juror’s individual decision, and that the individual juror would have returned the same verdict for or against the defendant on the offenses charged regardless of the defendant’s race, color, religious beliefs, national origin, or sex.		

\_\_\_\_\_  
Date

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Foreperson

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Juror

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Juror

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